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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/741,678	12/19/2003	Beth A. Lange	KCC 4970 (K-C 17,973)	4168

321 7590 04/19/2006

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER	
FIDEI, DAVID	

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/741,678	LANGE, BETH A.	
	Examiner	Art Unit	
	David T. Fidei	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) *3-5,7-14,18 and 24-26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,6,15-17 and 19-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *3/22/04 &12/27/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 3-5, 7-14, 18 and 24-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in Paper filed April 4, 2006.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 6 and16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims depend from claim 3 which is drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 15, 17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Gerard et al (Patent no. 5,435,025). A pre-packaged arrangement is disclosed comprising an absorbent article 12 (see col. 2, lines 47-40), a sunscreen carrier (see col. 3, line 20) and at least one packaging element 10. The absorbent article 12, the sunscreen carrier and the packaging element 10 being arranged relative to one another for distribution together as a single unit.

As to claim 15, a sunscreen lotion appears to be contemplated by Gerard et al, col. 3, line 20.

As to claim 17, the sunscreen carrier is secured to the absorbent article 12 by the at least one packaging element 10.

As to claim 19, the tube 10 is formed of plastic and manifestly disposable.

5. Claims 1, 15, 17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Gallo et al (Patent Publication no. 2002/0157972). A pre-packaged arrangement is disclosed comprising an absorbent article (e.g., a diaper, see paragraphs [0024], [0029]), a sunscreen carrier (see paragraph [0035]) and at least one packaging element 10 or 4. The absorbent article, the sunscreen carrier and the packaging element 10/4 being arranged relative to one another for distribution together as a single unit.

As to claim 15, the list of sunscreens compiled appears to encompass all conventional forms of the product that would be envisioned by general disclosure of Gallo et al.

As to claim 17, the sunscreen carrier is secured to the absorbent article by the at least one packaging element 10.

As to claim 19, the packaging element is formed of plastic and manifestly disposable.

As to claim 23, the absorbent article defined as a pair of swim pants is not distinguishable from the absorbent article of Gallo because people have long used diapers as "swim pants" in pools.

Furthermore, a patentable distinction does not exist between diapers and swim pants because any difference would be a function of intended use. A reference that contains all the structure defined in a claim, but not the recited use anticipates the claim because a new use does not make an old product patentable, In re Schreiber, 128 F.3d 1473, 44 U.S.P.Q.2d 1429 (Fed. Cir. 1997).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1, 2, 15, 17 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerard et al (Patent no. 5,435,025) in view of Moore (Patent no. 6,405,867). Gerard et al discloses the invention in as much as is claimed as described above. Moore discloses a "suncream" meant to encompass a sunscreen carrier as described in col. 1 of Moore. In addition a UV indicator that changes color as a display means integral with the sunscream carrier is disclosed, e.g., see col. 1, lines 54-56, 60, 61.

It would have been obvious to one skilled in the art at the time the invention was made to modify the package of Gerard et al by employing a suncream carrier as taught by Moore, in order to provide a sunscreen that not only protects the user but informs one of the UV conditions and whether or not sufficient sunscreen protection is provided by the sunscreen product.

As to claim 2, it is well known in the packaging art to provide packaging elements with product information thereon. To provide the end caps 14, 16; and thus the packaging element 10, with product information thereon would have been within the level of routine skill and obvious for the reason of providing advertisement, identification or information of about the product.

8. Claims 1, 2, 15, 17 and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gallo et al (Patent Publication no. 2002/0157972) in view of Moore (Patent no. 6,405,867). Gallo et al discloses the invention in as much as is claimed as described above. Moore discloses a "suncream" meant to encompass a sunscreen carrier as described in col. 1 of Moore. In

addition a UV indicator that changes color as a display means integral with the sunscream carrier is disclosed, e.g., see col. 1, lines 54-56, 60, 61.

It would have been obvious to one skilled in the art at the time the invention was made to modify the package of Gallo et al by employing a suncream carrier as taught by Moore, in order to provide a sunscreen that not only protects the user but informs one of the UV conditions and whether or not sufficient sunscreen protection is provided by the sunscreen product.

As to claim 2, it is well known in the packaging art to provide packaging elements with product information thereon. To the packaging elements 10 or 4 of Gallo et al with product information thereon would have been within the level of routine skill and obvious for the reason of providing advertisement, identification or information of about the products.

REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION

9. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner 's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematureness of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David T. Fidei
Primary Examiner
Art Unit 3728

dtf
April 17, 2006